No. 80-5

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

RICHARD JOHN McCARTY,
Appellant

VS.

PATRICIA ANN McCARTY,
Appellee

On Appeal from the Court of Appeal
of California
First Appellate District, Division Four

JOINT APPENDIX

December 4, 1980

BOWNE-PERNAU WALSH • 1045 SANSOME ST. • S.F., CA 94111 • (415) 981-7855

TABLE OF CONTENTS

		Page
1.	Petition for Dissolution of Marriage and Petitioner's Declaration Under Uniform Custody of Minors Act	1
2.	Response Re Dissolution of Marriage and Respondent's Declaration Under Uniform Custody of Minors Act	8
3.	Respondent's Request for Order and Declaration in Support of Notice of Motion Re Child Custody	14
4.	Petitioner's Financial Declaration and Amended Financial Declaration	17
5.	Respondent's Financial Declaration	29
6.	Declaration of Richard John McCarty	32
7.	Respondent's Objections to Proposed Findings of Fact and Conclusions of Law, and Counter Findings	34
8.	Final Findings of Fact and Conclusions of Law	39
9.	Stipulation Re Payment of Retirement Benefits	47
10.	Order Re Payment of Retirement Benefits	49
11.	Interrogatories and Answers 1 through 11 from Respondent's First Set of Interrogatories to Petitioner	51
12.	Pages 19, 30-31, 33, 46-48, and 55-56 of the Reporter's Trial Transcript, dated April 11, 1977	58

EDWARD B. COLLINS
COLLINS & HANAVAN
332 Pine St., Suite 400
San Francisco, CA. 94104
(415) 421-1100
Attorney(s) for Petitioner

Superior Court of California

County of San Francisco

Case Number 715-268

In re the marriage of
Petitioner: Richard John McCarty

and

Respondent: Patricia Ann McCarty

[Filed Dec. 1, 1976]

PETITION (MARRIAGE)

1. This petition is for:

Dissolution of the marriage pursuant to:
Civil Code Section 4506(1)

2. Statistical information:

a. Husband's social security number: 489-38-5700. Wife's social security number: 543-44-4081.

b. Date and place of marriage: 23 March 1957, Portland, Oregon.

c. Date of separation: 31 Oct. 1976. The number of years from date of marriage to date of separation is: 19 years, 7 months, 8 days.

d. There are 4 children of this marriage including the following minor children:

Name	Birthdate	Age	Sex
Martin Ralph McCarty	Dec. 14, 1960	15	M
Marlene Alika McCarty	Dec. 27, 1962	13	F
Michael Wilde McCarty	Sept. 8, 1964	12	M

3. Property statement:
Petitioner is domiciled in Oregon

4. Petitioner requests that the following described property be confirmed as petitioner's separate property:

(1) Chevrolet One Ton Van—1975

(2) Funds in checking account in Petitioner's name at Fort Sam Houston National Bank

(3) Funds in savings account at Pentagon Federal Credit Union in Petitioner's name

(4) All military retirement benefits

(5) All household furnishings

(6) Volkswagen—1972

(7) All other property acquired by Petitioner from his earnings.

5. Petitioner requests that:

a. Custody of children be awarded: Petitioner, Richard John McCarty

b. Spousal support be awarded: Respondent, Patricia McCarty

d. Property rights be determined as provided by law

e. Attorney's fees and costs NOT be awarded Respondent

and that the court inquire into the status of the marriage and render such judgments and make such injunctive or other orders as are appropriate.

Petitioner declares under penalty of perjury that the foregoing, including any attachments, is true and correct and that this declaration was executed on November 30, 1976 at San Francisco, California.

/s/ Edward B. Collins
Edward B. Collins
(Attorney for Petitioner)

/s/ Richard John McCarty

2. I have not participated as a party, witness, or in any other capacity. In any other litigation or custody proceeding, in this or any other state, concerning custody of a child subject to this proceeding.

3. I have no information of any custody proceeding pending in a court of this or any other state concerning a child subject to this proceeding, other than that set out in item 2.

4. I do not know of any person not a party to this proceeding who has physical custody or claims to have custody or visitation rights with respect to any child subject to this proceeding.

I declare under penalty of perjury that the foregoing, including any attachments, is true and correct and that this declaration is executed on (Date) .....
at (Place) San Francisco, California.

RICHARD JOHN MCCARTY

/s/ RICHARD JOHN MCCARTY

Edward B. Collins
Collins & Hanavan
332 Pine St., Suite 400
San Francisco, CA. 94104
(415) 421-1100
Attorney(s) for Petitioner

Superior Court of California, County of San Francisco

In re the marriage of Petitioner: Richard John McCarty and Respondent: Patricia Ann McCarty	Case Number

DECLARATION UNDER UNIFORM CUSTODY OF MINORS ACT

1. The number of minor children subject to this proceeding is 3. The name, place of birth, birthdate and sex of each child, the present address, periods of residence and places where each child has lived within the past five (5) years, and the name, present address and relationship to the child of each person with whom the child has lived during that time are:

Child's Name:
Michael Wilde McCarty

Place of Birth:
Washington, D.C.

Birthdate:

8 Sept. 1964

Sex:

Male

Period of Residence:	Address:	Person Child Lived With: (Name and Present Address)	Relationship:
July 1976 to present	334 Infantry Terrace Presidio of San Francisco, California	Col. & Mrs. Richard McCarty	Mother and Father
		Same. After 10/31/76 resided only with	Father
11/71 to 7/74	3120 Zion Lane El Paso, Texas	Col. & Mrs. Richard McCarty 3120 Zion Lane, El Paso, Tex.	Mother Father

Child's Name:

Marlene Alika McCarty

Place of Birth:

Honolulu, Hawaii

Birthdate:

12/27/62

Sex:

Female

Period of Residence:	Address:	Person Child Lived With: (Name and Present Address)	Relationship:
July 1976 to present	334 Infantry Terrace Presidio of San Francisco, California	Col. & Mrs. Richard McCarty	Mother and Father
		Same. After 10/31/76 resided with Father only	
11/71 to 7/74	3120 Zion Lane El Paso, Texas	Col. & Mrs. Richard McCarty 3120 Zion Lane, El Paso, Tex.	Mother Father

Child's Name:

Martin Ralph McCarty

Place of Birth:

Honolulu, Hawaii

Birthdate:

12/14/60

Sex:

Male

Period of Residence:	Address:	Person Child Lived With: (Name and Present Address)	Relationship:
July 1976 to present	334 Infantry Terrace Presidio of San Francisco, California	Col. & Mrs. Richard McCarty Same. After 10/31/76 resided with Father only	Mother and Father
11/71 to 7/74	3120 Zion Lane El Paso, Texas	Col. & Mrs. Richard McCarty 3120 Zion Lane, El Paso, Tex.	Mother and Father

Walter T. Winer
100 Bush St., 20th Floor
San Francisco, Ca 94104
433-5580
Attorney(s) for Respondent

Superior Court of California, County of San Francisco

In re the marriage of Petitioner: Richard John McCarty and Respondent: Patricia Ann McCarty	Case Number 715 268

[Filed Dec. 13, 1976]

RESPONSE (MARRIAGE)

1. This response is for:

Dissolution of the marriage pursuant to:

Civil Code Section 4506(1)

Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this petition.

2. The statistical information in the petition is correct (If incorrect, complete the following)

3. The property statement in the petition is incorrect (if incorrect, com'ete the following)

The following described property is subject to disposition by the court in this proceeding:

1. A 1975 Chevrolet One Ton Van;

2. Funds on Deposit;

3. Military retirement benefits;

4. Household furniture, furnishings and appliances;

5. A 1972 Volkswagen.

6. Other property the full nature and extent of which is unknown to respondent at this time.

7. $2,000.00 owed to the community by Marguerite Isaac.

4. The statement in the petition of separate property to be confirmed by the court in this proceeding is incorrect.*

*Petitioner has no separate property.

Respondent requests that the following described property be confirmed as respondent's separate property:

1. A piano;

2. Miscellaneous items of silver and household furnishings.

5. Respondent requests that:

a. Custody of the children be awarded to Respondent.

b. Support of children be awarded.

c. Spousal support be awarded Respondent.

d. Property rights be determined as provided by law.

e. Attorney's fees and costs be awarded Respondent.

and that the court inquire into the status of the marriage and render such judgments and make such injunctive or other orders as are appropriate.

Respondent declares under penalty of perjury that the foregoing, including any attachments, is true and correct and that this declaration was executed on Dec. 9, 1976 at San Francisco, California.

/s/ WALTER T. WINTER

Walter T. Winter
(Attorney for Respondent)

/s/ PATRICIA ANN MCCARTY

Walter T. Winter
100 Bush St., 20th Floor
San Francisco, Ca 94104
433-5580
Attorney(s) for Respondent

Superior Court of California
County of San Francisco

In re the marriage of Petitioner: Richard John McCarty and Respondent: Patricia Ann McCarty	Case Number 715 268

[Filed Dec. 13, 1978]

DECLARATION UNDER UNIFORM CUSTODY OF MINORS ACT

1. The number of minor children to this proceeding is 3. The name, place of birth, birthdate and sex of each child, the present address, periods of residence and places where each child has lived within the past five (5) years, and the name, present address and relationship to the child of each person with whom the child has lived during that time are:

Child's name:
Michael Wilde McCarty

Place of Birth:
Washington, D.C.

Birthdate:

Sept. 8, 1964

Sex:

Male

Period of Residence:	Address:	Person Child Lived With: (Name and Present Address)	Relationship:
July 1976 to present	334 Infantry Terrace Presidio of S.F.	Richard John McCarty and Patricia Ann McCarty After 10/31/76 only with father	Parents
11/71 to 7/74	3120 Zion Lane El Paso, Texas	Richard John McCarty and Patricia Ann McCarty Same address	Parents

Child's Name:

Marlene Alika McCarty

Place of Birth:

Honolulu, Hawaii

Birthplace:

Dec. 27, 1962

Sex:

Female

Period of Residence:	Address:	Person Child Lived With: (Name and Present Address)	Relationship:
July 1976 to present	334 Infantry Terrace Presidio of S.F.	Richard John McCarty and Patricia Ann McCarty After 10/31/76 only with father	Parents
11/71 to 7/74	3120 Zion Lane El Paso, Texas	Richard John McCarty and Patricia Ann McCarty Same address	Parents

Child's Name:

Martin Ralph McCarty

Place of Birth:

Honolulu, Hawaii

Birthdate:

Dec. 14, 1960

Sex:

Male

Period of Residence:	Address:	Person Child Lived With: (Name and Present Address)	Relationship:
July 1976 to present	334 Infantry Terrace Presidio of S.F.	Richard John McCarty and Patricia Ann McCarty After 10/31/76 only with father	Parents
11/71 to 7/74	3120 Zion Lane El Paso, Texas	Richard John McCarty and Patricia Ann McCarty Same address	Parents

2. I have not participated as a party, witness, or in any other capacity in any other litigation or custody proceeding. In this or any other state, concerning custody of a child subject to this proceeding.

3. I have no information of any custody proceeding in a court of this or any other state concerning a child subject to this proceeding, other than that set out in item 2.

4. I do not know of any person not a party to this proceeding who has physical custody or claims to have custody or visitation rights with respect to any child subject to this proceeding.

I declare under penalty of perjury that the foregoing, including any attachments, is true and correct and that this declaration is executed on (Date) Dec. 9, 1976 at (Place) San Francisco, California.

/s/ Patricia Ann McCarty

Walter T. Winter
100 Bush St., 20th Floor
San Francisco, California 94104
433-5580
Attorney(s) for Respondent

Superior Court of California
County of San Francisco

In re the marriage of Petitioner: Richard John McCarty and Respondent: Patricia Ann McCarty	Case Number 715 268

[Filed Dec. 13, 1976]

NOTICE OF MOTION (MARRIAGE)

To Petitioner: Richard John McCarthy and to his attorney of record: Edward B. Collins, Esq.

Notice is given that Respondent: Patricia Ann McCarty will move this court, located at City Hall, Polk & McAllister St., San Francisco on Dec. 23, 1976 at 9:15 a.m., Department No. 10, for certain orders as set forth in the attached Request for Order and Declaration, to which is attached:

Dated Dec. 13, 1976

/s/ Walter T. Winter
Attorney for Respondent
Walter T. Winter

*Indicate nature of orders requested and, if modification, so indicate by inserting "Re Modification."

Form Adopted by Rule 1285.10 at
Judicial Council of California
Effective January 1, 1972
Notice of Motion (Marriage)

Case Number, 715 268

Request for Order and Declaration In Support of

☐ Order to Show Cause ☒ Notice of Motion

Child Custody. I request that custody of the minor children be awarded (specify, including name, birthdate and age of each child): to Respondent

Martin Ralph McCarty, Dec. 14, 1960, age 15 years
Marlene Alika McCarty, Dec. 27, 1962, age 13 years
Michael Wilde McCarty, Sept. 8, 1964, age 12 years

Visitation. I request the following visitation order: Reasonable to petitioner.

Child Support. I request that $600.00 monthly be paid for child support, payable monthly.

Name, birthdate and age of each child	Amount
Martin, Dec. 14, 1960, age 15 years	$200.
Marlene, Dec. 27, 1962, age 13 years	200.
Michael, Sept. 8, 1964, age 12 years	200.

Spousal Support. I request that $1,000.00 monthly be paid for spousal support, payable monthly.

Attorney's Fees. I request that $1,500. on account be paid for attorney's fees, payable forthwith.

Court and Other Litigation Costs. I request that $250. on account be paid for court and other litigation costs, payable forthwith.

Injunctive/Other Order. I request an injunctive or other order as set forth on the reverse.

Form Adopted by Rule 1285.20 of

Judicial Council of California

Effective January 1, 1972

Request for Order and Declaration In Support of
Order to Show Cause/Notice of Motion

I declare under penalty of perjury that the foregoing, including any attachments, is true and correct and that this declaration was executed on Dec. 9, 1976 at San Francisco, California.

/s/ PATRICIA ANN MCCARTY
Patricia Ann McCarty

Attach (or insert above) required
supporting information

Edward B. Collins
Collins & Hanavan
332 Pine Street, Suite 400
San Francisco, California, 94104
(415) 421-1100
Attorney(s) for Petitioner

Superior Court of California,
County of San Francisco

In re the marriage of Petitioner: Richard John McCarty and Respondent: Patricia Ann McCarty	Case Number 715-268

[Filed Dec. 1, 1976]

PETITIONER'S FINANCIAL DECLARATION

Dated:

Husband: Rich rd John McCarty

Age: 42, Social Security No.: 489 38 5700

Occupation: Military Physician

Wife: Patricia Ann McCarty

Age: , Social Security No.: 543 44 4081

Occupation: Housewife

Part A: Income and Expense Statement

	Husband	Wife
(a) Gross monthly income from:		
Salary and wages (including commissions, bonuses and overtime) payable	$3,948	$ 0
(b) Itemize deductions from gross income:		
Income taxes (state and federal)	$ 763	$
Social security	75	
Medical or other insurance	61	
Savings plan: Pentagon Federal Credit	60	
Other: (Specify) Support of Mother	151	
Total deductions	$1,110	$
(c) Net monthly income	$2,838*	$

*average includes bonus of $13,000 paid annually by election.

(d) Total monthly expenses: (Specify which party is the custodial parent and list name and relationship of all members of the household whose expenses are included) Petitioner presently has custody of the 3 minor children and continues to support the adult child in part. Maureen McCarty, 18; Martin R. McCarty, 15; Marlene McCarty, 13; Michael McCarty, 12. Medical expenses include Petitioner's obligation of $200 per month for Respondent's care.

	Husband	Wife
Rent or mortgage payments (residence)	$ 268	$250
Food and household supplies	400	100
Utilities	—	10
Telephone	60	5
Laundry and cleaning	25	
Clothing	175	
Medical	318	
Dental	218	
Insurance (life, health, accident, etc.)	15	
Child care, Maureen McCarty	100	
School	275	
Entertainment	100	

Incidentals	200	75
Auto expenses (insurance, gas, oil, repair)	150	none
Auto payments	152	

Creditor's Name	For	Monthly Payment	Balance
Pentagon Federal Credit			
	for Chevrolet van	$152.53	$6,000 approx.

Total expenses	$2,547	$440

(e) Other debts and obligations:

Creditor's Name/For	Balance
Sears-Roebuck/general purchases	$900

(f) All property of the parties known to me includes the following:

Cash on hand	$ 20
Money in checking accounts	700
Money in savings accounts	
Money in credit union accounts	7,000
Money in any other accounts or deposits	
Retirement or pension fund	not vested
Life insurance cash value	2,712
Value of any stocks & bonds	
Value of real estate	
Value of all other property	12,000 (approx.)
Total property	$22,432

Part B: Property Statement

There is no property subject to disposition by the court in this proceeding as community property.

The following described separate property is subject to confirmation by the court in this proceeding:

Asset/Obligation	Value of Asset	Amount of Obligation
Household furnishings, approximately	$10,000	$
1975 Chevrolet truck	8,300	6,000
Funds in checking account at National Bank of Sam Houston, San Antonio, Texas	700	
Funds at savings account—Pentagon Federal Credit Union	7,000	
Retirement Benefits (not vested)	unknown	
1972 Volkswagon	1,800	

Part C: Attorney's Fees and Cost Statement

I have agreed to pay my attorney $40.00 per hour monthly, plus expenses.

/s/ Edward B. Collins

(Attorney's signature)
Edward B. Collins

/s/ Richard John McCarty

(Party's signature)
Richard John McCarty

I declare under penalty of perjury that the foregoing, including any attachments, is true and correct and that this declaration was executed on Nov. 30, 1976 at San Francisco, California.

/s/ Richard J. McCarty

Richard J. McCarty

Edward B. Collins
Collins & Hanavan
332 Pine Street, Suite 400
San Francisco, California 94104
(415) 421-1100
Attorneys for Petitioner

Superior Court of California
County of San Francisco

Case Number 715-268

In re the marriage of
Petitioner: Richard John McCarty

and

Respondent: Patricia Ann McCarty

[Filed May 20, 1977]

PETITIONER'S AMENDED FINANCIAL DECLARATION

Husband: Richard John McCarty

Age: 42 Social Security No.: 489 38 5700

Occupation: Military Physician

Wife: Patricia Ann McCarty

Age: 40 Social Security No.: 543 44 4081

Occupation: Housewife

Part A: Income and Expense Statement

	Husband	Wife
(a) Gross monthly income from:		
Salary and wages (including commissions, bonuses and overtime) payable	$2,596.51	$
Child/spousal support re prior marriage		
Dividends and interest (Insurance dividend $100/yr.)		
Total monthly income	$2,596.51	$
(b) Itemize deductions from gross income:		
Income taxes (state and federal)	$ 546.00	$
Social security	75.00	
Medical or other insurance	62.52	
Savings plan Pentagon Fdl. Credit	59.10	
Other: (Specify)		
Credit Union—Auto loan	153.52	
Support of Mother	151.00	
Charity	12.50	
Total deductions	$1,059.64	$
(c) Net monthly income—*See exhibit "A"	$1,536.87	$

(d) Total monthly expenses: (Specify which party is the custodial parent and list name and relationship of all members of the household whose expenses are included). Petitioner presently has custody of the 3 minor children and continues to support the adult child in part. Maureen McCarty—18; Martin R. McCarty—15; Marlene McCarty—14; Michael McCarty—12.

	Husband	Wife
Rent or mortgage payments (residence)	$	$
Food and household supplies	400.00	
Utilities	—	
Telephone	60.00	
Laundry and cleaning	25.00	
Clothing	175.00	
Medical un-reimbursed (since 1 Jan.)	60.00	
Dental	218.00	

Insurance (life, health, accident, etc.) ..			15.00	
Payment of child/spousal support re prior marriage				
School—See exhibit "B"			275.00	
Entertainment			100.00	
Incidentals			100.00	
Auto expenses (insurance, gas, oil, repair)			150.00	
Professional Dues & Journals			18.00	
Creditor's Name/For	**Monthly Payment**	**Balance**		
Executive Credit Loan	$25.28	$409.00	25.00	
Other: (Specify)				
Housekeeping			200.00	
Tap Dance and piano lessons			33.00	
Children's allowances			60.00	
Total expenses			$1914.00	$

(e) Other debts and obligations:

Legal Expenses	est.	3000
Creditor's Name/For		**Balance**
Sears Roebuck—general purchases as of 1 Dec. '76		$ 974
Pentagon Fedl. Credit Union as of 1 Nov. '76—loan of Chev. van		5740
College expenses for 18 yr. old daughter not incl. above		3000 per year
Champus—psychotherapy costs—unreimbursed		1200
Income tax		750

(f) All property of the parties known to me includes the following:

Cash on hand	$	100
Money in checking accounts		230
Money in savings accounts		4,561
Retirement or pension fund		not vested
Life insurance cash value		3,200
Value of all other property		12,000 est.
Total property	$	20,091

Part D: Property Statement

There is no property subject to disposition by the court in this proceeding as community property.

The following described separate property is subject to confirmation by the court in this proceeding:

Asset/Obligation (Estimate)	Value of Asset	Amount of Obligation
Household furnishings, approximately	$10,000	$
1975 Chevrolet truck	6,500	5,740
Funds in checking account at National Bank of Sam Houston, San Antonio, Texas	230	
Funds at savings account—Pentagon Federal Credit Union	4,561	
Retirement benefits (not vested)	unknown	
1972 Volkswagon	1,800	
Marguerite Issac debt	2,000	
Life Insurance—cash value	3,200	
Champus		1,262
Sears		974
Income tax		750

Part C: Attorney's Fees and Cost Statement

I have agreed to pay my attorney $40.00 per hour monthly, plus expenses.

/s/ Edward B. Collins

(Attorney's signature)
Edward B. Collins

/s/ Richard John McCarty

(Party's signature)
Richard John McCarty

I declare under penalty of perjury, that the foregoing, including any attachments, is true and correct and that this declaration was executed on April 10, 1977 at San Francisco, California.

/s/ Richard J. McCarty

Richard J. McCarty

Exhibit "A"

Leave and Earning Statement

1. Name
   McCarty Richard J

2. Unit ID Code
   DQ4AAA

3. Pay Grade
   O 6

4. Period Covered
   01-31Mar77

5. Soc. Sec. No.
   489-38-5700

Net Pay Due
1184.00

6 Entitlements

Type	Amount
Basic pay	$2,190.90
Medical pay	350.00
Bas off	55.61
Totals	$2,596.51

7. Allotment Connections

Type		Amount
Ins	01	$ 14.93
Ins	02	44.19
Finin	01	300.00
Finin	02	211.63
SPT-V	01	151.00
CFC	01	12.50
		$ 734.25

8. Other Collections

Type	Amount
SGLI	$ 3.40
Federal tax	545.99
FICA tax	128.16
	$677.55

9. Amt. Brot. Fwd.
.10

10. Total Ent
$2596.51

11. Allotments
$734.25

12. Other Colls
$677.55

13. Net Earn
$1184.81

14. Mid Mo Pmt
None

15. End Mo Pmt
$1184.00

16. Amt. to Be Brot. Fwd.
.81

17. Income This Period
$2540.90

18. Income Year to Date
$7622.70

19. Income Tax Year to Date
$1637.97

20. Exem
2

21. Add Tax Whd
0

22. FICA Wage
$2190.90

23. FICA Wage Year to Date
$6572.70

24. FICA Tax Year to Date
$384.50

25. State Legal Residence
Or 38

28. Beg IV Bal
46.0

29. Lv Earn
22.5

30. Lv Used
14

31. Ind Lv Bal
54.5

37. Remarks
EOM National Bnk Ft Sam Houst CR 3740198 San Antonio, TX 78286, Guaranteed Deposit

Finance Office Information

38. DSSN
5058

39. Control Number
004646

40. SSOC
Mrn

41. OPED
590612

42. PEBD
550613

45. VPS
21

47. PENO
OLI

48.
37.5

Exhibit "B"

Statement of Educational Expenses

Estimate for 1977-1978 School Year

1. Mike— $550-600 (St. Francis)
2. Marlene— $1000 (Mercy High)
3. Martin— $1050 + 300 building fund (St. Ignatius High)
4. Maureen— $3000 (Cal Poly)

Walter T. Winter
100 Bush St., 20th Floor
San Francisco, CA 94104
433-5580
Attorney(s) for Respondent

Superior Court of California,
County of San Francisco

Case Number 715-268

In re the marriage of
Petitioner: Richard John McCarty

and

Respondent: Patricia Ann McCarty

RESPONDENT'S FINANCIAL DECLARATION

Dated April 8, 1977

Husband: Richard John McCarty

Age: 42 Social Security No.: 489-38-5700

Occupation: Physician (military)

Wife: Patricia Ann McCarty

Age: 40 Social Security No.: 543-44-4081

Occupation: None

(d) Total monthly expenses: (Specify which party is the custodial parent and first name and relationship of all members of the household whose expenses are included)

	Husband	Wife
Rent or mortgage payments (residence)	$	$ 250.
Food and household supplies		175.
Utilities		15.
Telephone		10.
Laundry and cleaning		20.
Clothing		75.
Dental		50.
Entertainment with children		80.
School		100.
Entertainment		75.
Incidentals: X-Mas, Birthday gifts, magazines, etc.		75.
Auto expenses (insurance, gas, oil, repair)		75.
Total expenses	$	$1,000

Walter T. Winter
100 Bush St., 20th Floor
San Francisco, CA 94104
433-5580

STATEMENT OF FEES AND COSTS TO DATE

Mrs. Patricia A. McCarty

WALTER T. WINTER time, 16¾ hrs. at $90 per hour	$1,507.50
One Court appearance at $400 per appearance	400.00
Associate lawyer time, 9 hrs. 10 min. at $60 per hour	550.00
Secretarial time, 18 hrs. 35 min. at $15.00 per hour	278.75
	$2,736,25

COSTS:

Filing fee	$ 29.00	
Photocopies	49.40	
Deposition (Wife)	19.50	
Deposition (Husband)	101.20	
	$199.10	199.10
		$2,935.35
Paid on account as per Court Order		1,000.00
Balance due prior to Trial		$1,935.35

DECLARATION OF RICHARD JOHN McCARTY

I, Richard John McCarty, declare:

1. I am a United States Army Medical Officer, with the rank of colonel, and am presently Chief of Cardiology at Letterman Hospital. I am living on the Presidio Military Reservation in housing provided me by the Army.

2. I married Patricia Ann McCarty during my second year of medical school at the University of Oregon. At about that time, I informed the school that I intended to remain in Oregon and I began paying tuition as an Oregon resident the following year. I also registered to vote in Oregon.

3. I went on active duty with the Army during my fourth year of medical school. After graduation, I was assigned to Valley Forge Army Hospital in Pennsylvania to intern for one year. The Army then assigned me to Hawaii for three years, to Washington, D.C., for two years, to California for four years and to Texas for five years.

4. After completing my tour of duty in Texas, I began my present assignment at Letterman Hospital.

5. I have never registered to vote nor voted in any state other than Oregon.

6. I presently own three vehicles of which two are registered in Oregon. The third has California plates, but there is a military non-resident stamp affixed to the plates.

7. I do not consider myself domiciled in California. Since my marriage, I have always regarded myself as being domiciled in Oregon.

8. I presently have eighteen and one half years' credit toward retirement. In the United States Army, it is possible to retire on a pension after credit for twenty years' service.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on April 11, 1977, at San Francisco, California.

RICHARD JOHN McCARTY
Richard John McCarty
Petitioner

Law offices of
Walter T. Winter
100 Bush St., 20th Floor
San Francisco 94104
433-5580
Attorney for Respondent

Superior Court of the State of California

For the City and County of San Francisco

No. 715 268

In re the marriage of
Petitioner: Richard John McCarty

and

Respondent: Patricia Ann McCarty

[Filed Sept. 6, 1977]

OBJECTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW AND COUNTER FINDINGS

Patricia Ann McCarty, respondent herein, objects to the findings of fact and conclusions of law heretofore submitted by petitioner, Richard John McCarty, and submits counter findings as follows:

1. Reference is made to proposed finding of fact 4., in which it is indicated that only the respondent was a resident of the State at the time of the filing of the petition; the Memorandum of Intended Decision indicated that petitioner had failed to sustain the burden of proving that he

was a resident of the State of Oregon, which leads to the natural conclusion that he must have been a resident of the State of California, and accordingly, the Court should make the following finding:

"Petitioner and respondent were residents of the State of California for at least six months and of the County of San Francisco for at least three months immediately preceding the filing of the petition herein."

2. Reference is made to findings of fact 7, 8, 9, 10, 11, 12, and 13; with reference to the items set forth therein, some are purely evidentiary in nature and some are without any basis or foundation in the evidence; furthermore, they are all slanted favoring the petitioner and very little is said with reference to his abilities.

Civil Code § 4801 was amended to provide that, at the request of either party, the court should make appropriate findings with respect to the circumstances of the parties, and accordingly, it appears that there should be some findings made with respect to the various circumstances, but since this Code section was just enacted at the beginning of this year, there is no authority or measure or direction as to what the circumstances are that should be set forth.

In order to be fair to both parties, it is submitted that the Court should make the following findings:

"7. Petitioner is a physician and is a full Colonel in the United States Army. His present income is a salary of $2,596.00 per month plus tax free housing and utilities, except telephone. He also receives an annual $13,000.00

bonus as an incentive because he could receive more as a physician outside the military. In addition, he receives other benefits, including health care, CHAMPUS insurance, commissary rights and group insurance. Petitioner has indicated that he plans to retire from the military in July, 1978. He is a board certified physician, having received board certification in internal medicine and cardiology.

"Petitioner's stated gross income is $2,596.51 per month from which he claims deductions for the following items:

Income taxes	$546.00
Social Security	75.00
Medical or other insurance	62.50

These are the only regular, necessary deductions. However, he also has deducted from his salary the following sums:

Credit union for savings	$ 59.10
Credit union for auto loan	153.52
Support of his mother	151.00
Charity	12.50

From the foregoing, he claims a net monthly income of $1,536.37.

"Petitioner filed a financial declaration with the Court indicating that he had necessary expenses for him and four (4) children, including an adult child, of $1,914.00."

"8. Respondent is 40 years old and attends San Francisco State University. She is a major in psychology and will need five or six years more schooling before she can obtain employment in this field. She has not worked since 1958 when she helped put her husband through medical school.

"Respondent filed a financial declaration in which she indicated that she had no income at all and that her necessary monthly expenses were $1,000.00."

"9. From the foregoing, the Court concludes that the petitioner has the ability to pay to respondent, and the respondent needs from petitioner, and it would be reasonable to require petitioner to pay respondent the sum of $500.00 per month spousal support."

3. Objection is made to finding of fact 16, inasmuch as it is incomplete and does not set forth the complete division of property. Further, no reference at all has been made to the pension and retirement funds and the fact that the Court retained jurisdiction to make a determination of the division thereof and to supervise distribution, all in accordance with the Intended Decision.

With reference to the retirement fund, it is requested that the Court make the following findings:

"16. Petitioner has accrued certain pension and retirement benefits by virtue of his service in the United States Army during the marriage of the parties hereto; the Court having found that the petitioner is a domiciliary of the State of California, and further having found that Petitioner subjected himself to the jurisdiction of the Courts of the State of California by virtue of filing this action herein, and further, pursuant to Civil Code § 4803, the said military pension and retirement rights are subject to the quasi-community property laws of this State, the Court finds that the respondent is entitled to and does have a community property interest in such military pension and

retirement funds and that the same will be divided in accordance with the formula set forth in the case of *In re Anderson,* 64 Cal.App. 3d, page 38. Pursuant to this decision, petitioner shall pay to respondent, as long as she lives, that portion of his total monthly pension or retirement payment which equals one-half (½) of the ratio of the total time between marriage and separation during which petitioner was in the United States Army to the total number of years he has served with the United States Army at the time of retirement, and the Court retains jurisdiction to make such determination at that time and to supervise distribution thereof."

It is respectfully submitted that the conclusions of law conform to the foregoing findings.

Dated: July 29, 1977

Respectully submitted,
Law Offices of Walter T. Winter
By /s/ BARBARA DORNAN
Barbara Dornan

Edward B. Collins, Esq.
Kirkwood, Kaplan, Russin & Vecchi
332 Pine Street
San Francisco, California 94104
Telephone: (415) 421-1100
Attorneys for Petitioner

In the Superior Court of the State of California
In and For the City and County of San Francisco

No. 715 268

In Re the Marriage of
Richard John McCarty,
Petitioner,
and
Patricia Ann McCarty,
Respondent.

[Filed Nov. 23, 1977]

FINDINGS OF FACT AND CONCLUSIONS OF LAW*

This proceeding for dissolution of marriage came on regularly for hearing before the above-entitled Court on April 11, 1977, Petitioner being represented by EDWARD B. COLLINS, his attorney, and Respondent being represented by WALTER WINTER, her attorney. Evidence both oral and documentary was introduced, and the cause

*Note: The findings of fact and conclusions of law which appear as Appendix B, Document 2 to the Jurisdictional Statement were supplanted by this document.

was submitted for decision. Being fully advised in the matter, the Court makes the following findings of fact:

FINDINGS OF FACT

1. The parties were married on 23 March 1957 in Portland, Oregon, and have been married ever since.

2. The parties separated 31 October 1976 and the number of years from date of marriage to date of separation is nineteen (19) years, seven (7) months, and eight (8) days.

3. There are four (4) children of this marriage, including the following minor children:

Name	Birth Date	Sex
Martin Ralph McCarty	December 14, 1960	Male
Marlene Alika McCarty	December 27, 1962	Female
Michael Wilde McCarty	September 8, 1964	Male

4. Irreconcilable differences between the parties, which have caused an irremediable breakdown of the marriage, exist.

5. The best interests of the minor children of the parties require that their care, custody, and control be awarded to the Petitioner with reasonable visitation rights to the Respondent.

6. Petitioner is a physician and is a full Colonel in the United States Army. His present income is a salary of $2,596.00 per month plus tax free housing and utilties, except telephone. He also receives an annual $13,000.00 bonus as an incentive because he could receive more as a physician outside the military. In addition, he receives other benefits, including health care, CHAMPUS insurance, commissary

rights and group insurance. Petitioner has indicated that he plans to retire from the military in July, 1978. He is a board certified physician, having received board certification in internal medicine and cardiology. Petitioner has the ability to pay respondent and respondent needs $500.00 per month spousal support.

Petitioner's stated gross income is $2,596.51 per month from which he claims deductions for the following items:

Income taxes	$546.00
Social Security	75.00
Medical or other insurance	62.50

These are the only regular, necessary deductions. However, he also has deducted from his salary the following sums:

Credit union for savings	$ 59.10
Credit union for auto loan	153.52
Support of his mother	151.00
Charity	12.50

From the foregoing, he claims a net monthly income of $1,536.37.

Petitioner filed a financial declaration with the Court indicating that he had necessary expenses for him and four (4) children, including an adult child, of $1,914.00.

7. Respondent is 40 years old and attends San Francisco State University. She is a major in psychology and will need five or six years more schooling before she can obtain employment in this field. She has not worked since 1958 when she helped her husband through medical school.

Respondent filed a financial declaration in which she indicated that she had no income at all and that her necessary monthly expenses were $1,000.00.

The respondent is capable of obtaining part-time employment while she is attending San Francisco State University. The Respondent is entitled to utilize the commissary, officers' club, post exchange, and military medical facilities which offer either lower prices than are regularly available to civilian consumers or, as in the case of medical care, are free until a final Decree of Dissolution is entered.

8. In addition to his obligation to support and educate the three (3) minor children, the petitioner provides for the college expenses of his eighteen (18)-year-old daughter, MAUREEN, and for financial aid to his infirm mother.

9. The furniture and furnishings of the parties have been divided equally between them by stipulation before the Court.

10. The following is the community property and debts of the parties subject to disposition by the Court in this proceeding:

A. Property:

(1) Chevrolet Van	$ 5,875.00
(2) Cash value of life insurance policies	3,280.00
(3) Cash (after payment of debts at time of separation	201.00
(4) Volkswagen Car	2,050.00
(5) Debt owed by Margarite Iassac	2,000.00
Total	$13,406.00

B. Debts:

Attorneys' fees and costs:

(1) Walter Winter, Esq.	2,000.00
For costs	$ 100.00
(2) Edward Collins, Esq.	2,000.00
For costs	100.00
Total	$ 4,200.00

Petitioner has paid $1,000.00 to Mr. Winter and $1,000.00 to Mr. Collins on account for the above attorneys' fees from the community funds.

11. Petitioner has failed to bear his burden of proof that he was a resident of the State of Oregon at all times during his military service.

12. The parties incurred a 1976 tax liability of $913.00, which was not covered by deductions from the Petitioner's salary.

13. Respondent was a resident of this State for more than six (6) months and of this County for more than three (3) months immediately preceding the filing of a petition in this action.

14. Petitioner has accrued certain pension and retirement benefits by virtue of his service in the United States Army during the marriage of the parties hereto; and further, pursuant to Civil Code § 4803, the said military pension and retirement rights are subject to the quasi-community property laws of this State, the Court finds that the Respondent is entitled to and does have a quasi-community interest in such military pension and retirement funds and that the same will be divided in accordance with the formula set forth in the case of *In re Anderson,* Cal. App. 3d, page 38, pursuant to this decision, petitioner shall pay to respondent, as long as she lives, that portion of his total monthly pension or retirement payment which equals one-half (½) of the ratio of the total time between marriage and separation during which petitioner was in the United States Army to the total number of years he has served with the United Army at the time of retirement,

and the Court retains jurisdiction to make such determination at that time and to supervise distribution thereof.

CONCLUSIONS OF LAW

From the above facts, the Court concludes that:

1. The Petitioner is entitled to a judgment dissolving his marriage.

2. The Petitioner is entitled to the care, custody, and control of the minor children and the Respondent is entitled to reasonable visitation rights.

3. The Respondent is entitled to receive as spousal support the sum of $475.00 per month for her support and maintenance, such payments to have commenced on May 1, 1977 and to continue until a final decree of dissolution of the marriage is entered. Upon entry of a final decree of dissolution, the Respondent will be entitled to receive as spousal support the sum of $500.00 per month for her support and maintenance to commence on the first day of the month after the final judgment of dissolution is entered. Furthermore, Respondent is to receive twenty percent (20%) of the gross amount of variable incentive pay bonuses received by Petitioner. Such support is to continue until her death or remarriage or further order of the Court, whichever occurs first.

4. The Respondent is to report to the Petitioner at the beginning of each month any income she receives from employment and Petitioner is to be entitled to reduce the amount he pays in spousal support by $1.00 for each $3.00 she has earned during the preceding month.

5. The property subject to disposition of this Court shall be awarded as follows:

(a) To the Petitioner: the Chevrolet Van; the cash, after payment of obligations at the date of separation, of $201.000; and the cash value of the life insurance policies of $3,280.00.

(b) To the Respondent: The Volkswagen, and the obligation of Margarite Isaac of $2,000.00.

So that the division of property will be equal, the Petitioner shall first pay attorneys' fees of $1,000.00 to WALTER WINTER, ESQ., and an additional $100.00 for costs, and $1,000.00 to EDWARD B. COLLINS, ESQ., and additional $100.00 for costs, in addition to the $1,000.00 that he has already paid to both MR. WINTER and MR. COLLINS. The Petitioner should then pay $553.00 to the Respondent.

6. The Court retains jurisdiction to allocate the parties' 1976 income tax liability.

7. The Petitioner, having failed to sustain the burden of proving that he was a resident of the State of Oregon at all times during his miltary service, the Court finds that his military pension or retirement rights with the U.S. Army are to be divided as quasi-community property pursuant to Section 4803 of the Civil Code, and Respondent's community property interest in any funds received therefrom, will be divided in accordance with the formula set forth in the case of *In re Anderson,* 64 Cal.App. 3d 38. Pursuant to this decision, Petitioner shall pay to Respondent, as long as she lives, that portion of his total monthly

pension or retirement payment which equals one-half of the ratio of the total time between marriage and separation during which Petitioner was in the U.S. Army to the total number of years he has served with the Army at the time of retirement, and the Court retains jurisdiction to make such a determination at that time and to supervise distribution.

Let judgment be entered accordingly.

Dated: Nov. 21, 1977

/s/ DONALD B. KING
Donald B. King
Judge of the Superior Court

Edward B. Collins
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332 Pine Street, Suite 400
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Telephone: (415) 421-1100
Attorney for Petitioner

Superior Court of the State of California

City and County of San Francisco

No. 715 268

In re the Marriage of
Richard John McCarty,
Petitioner,
and
Patricia Ann McCarty,
Respondent.

[Filed Sept. 21, 1978]

STIPULATION RE PAYMENT OF RETIREMENT BENEFITS

It is hereby stipulated by and between the parties hereto through their respective counsel as follows:

The petitioner, Richard John McCarty, is to pay all sums due the respondent, Patricia Ann McCarty, pursuant to this Court's order of November 30, 1977 providing that "The petitioner shall pay the respondent as long as she lives, that portion of his total monthly pension or retire-

ment payment from the U.S. Army which equals one-half of the ratio of the total time between marriage and separation during which petitioner was in the U.S. Army for the total number of years he has served with the Army at the time of his retirement, . . ." into a savings account pending the conclusion of the petitioner's appeal and the entry of a final order from which no appeal is either taken or can be taken. Such savings account shall be in the name of counsel for the parties and under their joint control. Upon conclusion of the appellate process, the prevailing party shall be entitled to all the funds deposited in the savings account and the interest thereon.

Dated: September 5, 1978

KIRKWOOD KAPLAN
RUSSIN & VECCHI

/s/ EDWARD B. COLLINS
Edward B. Collins,
attorney for petitioner,
Richard J. McCarty

Dated: September 6, 1978

/s/ WALTER T. WINTER
Walter T. Winter,
attorney for respondent,
Patricia A. McCarty

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Superior Court of the State of California
City and County of San Francisco

No. 715 268

In re the Marriage of
Richard John McCarty,
Petitioner,
and
Patricia Ann McCarty,
Respondent.

[Filed Sept. 21, 1978]

ORDER RE PAYMENT OF RETIREMENT BENEFITS

The Court, having reviewed the Stipulation re Payment of Retirement Benefits filed with this Court by the parties to the above-entitled action, and being satisfied with its contents, hereby makes the following order:

The petitioner, Richard John McCarty, is to pay all sums due the respondent, Patricia Ann McCarty, pursuant to this Court's order of November 30, 1977 providing that "The petitioner shall pay the respondent as long as she

lives, that portion of his total monthly pension or retirement payment from the U.S. Army which equals one-half of the ratio of the total time between marriage and separation during which petitioner was in the U.S. Army for the total number of years he has served with the Army at the time of his retirement, . . ." into a savings account pending the conclusion of the petitioner's appeal and the entry of a final order from which no appeal is either taken or can be taken. Such savings account shall be in the name of counsel for the parties and under their joint control. Upon conclusion of the appellate process, the prevailing party shall be entitled to all the funds deposited in the savings account and the interest thereon.

Dated: 9/21/78

DONALD R. KING
Judge of the Superior Court

Approved as to form:

/s/ WALTER T. WINTER
Walter T. Winter, attorney for
respondent, Patricia Ann McCarty

Edward B. Collins
Collins, Hanavan & Theophilos
332 Pine Street, Suite 400
San Francisco, CA 94104
Telephone: (415) 421-1100
Attorney for Petitioner

Superior Court of California
City and County of San Francisco

No. 715 268

In re the Marriage of
Petitioner: Richard John McCarty

and

Respondent: Patricia Ann McCarty

INTERROGATORIES TO PETITIONER (FIRST SET) AND ANSWERS*

TO PETITIONER ABOVE-NAMED AND TO SAID PARTY'S ATTORNEY OF RECORD:

Respondent, Patricia Ann McCarty, requests that petitioner, Richard John McCarty, pursuant to § 2030 of the California Code of Civil Procedure, answer separately and fully, in writing, under oath, the following first set of interrogatories, and that you file and serve a copy of such

*Note: This composite interrogatories and answers was specially prepared for this appendix. The complete separate interrogatories and answers appear at pages 31 through 61 and 71 through 83 of the Record.

Answers upon the respondent within thirty (30) days after service of such interrogatories.

Comes now the Petitioner and answers Respondent's interrogatories as follows:

PERSONAL INFORMATION

Interrogatory No. 1:

State your full name.

Answer to Interrogatory No. 1:

Richard John McCarty.

Interrogatory No. 2:

Have you ever been known by any surname other than the one you are presently using?

Answer to Interrogatory No. 2:

Yes.

Interrogatory No. 3:

If so, state:

(a) The name.

(b) The inclusive dates during which you used such name:

(c) The reason for your use of such name.

Answer to Interrogatory No. 3:

(a) Richard Sloan.

(b) From date of birth 22 March 1934 until age 4-5.

(c) Remarriage of mother.

Interrogatory No. 4:

State your date of birth and your present age.

Answer to Interrogatory No. 4:

March, 1934, age 42.

Interrogatory No. 5:

Set forth your current address.

Answer to Interrogatory No. 5:

334 Infantry Terrace, Presidio of San Francisco, CA 94129.

Interrogatory No. 6:

How long have you resided at said address?

Answer to Interrogatory No. 6:

Two and one-half years.

Interrogatory No. 7:

What is the name of each person relating there with you?

Answer to Interrogatory No. 7:

Martin Ralph McCarty, Marlene Alika McCarty, Michael Wildie McCarty, Loretta M. McCarty.

Interrogatory No. 8:

You have asked for child custody. In the event that the basis for your claim to custody is any act or omission on the part of the other parent, set forth the following:

(a) A description of each act or omission upon which you base your claim;

(b) Date and place of occurrence of each act or omission, as the case may be;

(c) Name and address of all witnesses to such act or omission;

(d) If you were not personally present at such occurrence, how you found out about it;

(e) Whether or not you, your agents or employees have obtained any statements from any witnesses or photographs or voice recordings concerning the act or omission and, if so, the present location of such statements, photographs or voice recordings.

Answer to Interrogatory No. 8:

(a) 1. Respondent's prolonged affair with minor daughter's fiancé.

2. Deviant psychological behavior.

3. Respondent's habitual prevarication.

(b) 1. Specific acts are too numerous to list.

2. Deviant psychological behavior.

3. Too numerous to list.

(c) 1. Maureen McCarty.

2. All Children.

3. All Children.

(d) 1. My daughter informed me of the affair.

2. Doctor Binger at the University of California Medical Center, among others Dr. David Allen, Dr. Taft Moore, etc.

3. Statements by the children for some of the incidents.

EMPLOYMENT

Interrogatory No. 9:

If you are employed (other than self-employed) set forth the following information concerning *each* of your jobs:

(a) Name and address of your employer;

(b) What is your occupation;

(c) Is this a full time job? If not, set forth the weekly time you spend on this job.

(d) Set forth the amount of your gross salary, and whether this is on a weekly, monthly, semi-monthly, hourly, or other basis;

(e) What are your paydays;

(f) Itemize your regular deductions from your salary:

Federal Income Tax	$
State Income Tax	
Social Security (F.I.C.A.)	
Unemployment	
Medical Insurance	
Life insurance	
Union or other dues	
Retirement or pension fund	
United Fund or charity	
Savings Bonds	
Stock Plan	
Other (specify)	
Total regular deductions	$

(g) How many exemptions are you taking for income tax purchases? [sic]

(h) Do you receive or have you received any fringe benefits, such as automobile, expense account, etc., and if so, specify what those benefits are;

(i) In addition to your regular salary as above-specified, do you receive or have you received any additional payment from your employer for overtime, bonus, or other, and if so, please specify what you received;

(j) Do you expect to receive any additional payments for overtime, bonus, or other additional monies over and above your regular salary in the future, and if so, specify what you expect to receive;

(k) Do you expect to receive a raise within the next year, and if so, specify the amount thereof, if you know;

(l) Do you have any stock purchase rights through your employment, and if so, set forth the details thereof;

(m) Have you accumulated any vacation time with your employer, which can be withdrawn in the form of money in lieu of vacation, and if so, how much?

Answer to Interrogatory No. 9:

(a) United States Army, Letterman Army Medical Center, Presidio of San Francisco, California.

(b) Military physician.

(c) Yes.

(d) $2,596.51 per month plus housing.

(e) The last day of the month.

(f) Federal Income Tax—$545.99, State Income Tax—$0, Social Security—$75.00, Medical Insurance—none, life insurance—$62.50, union and other dues—none, retirement none, United Fund—$12.50, Savings Bond—none, stock plan—none, other support—mother, $151.00 per month, Pentagon Federal Credit Union $211.63.

(g) Two.

(h) Medical meeting trips, medical care and commissary privileges.

(i) Annual bonus of $13,000 per year paid in advance on the 24th of September 1976.

(j) Uncertain.

(k) Yes, $128 per month on June 12, 1977.

(l) No.

(m) No.

EDUCATION

Interrogatory No. 10:

Please set forth your educational background listing all degrees and licenses which you have obtained or able to qualify for:

Answer to Interrogatory No. 10:

Bachelor of Science 1956, Medical Doctor 1959, License to Practice Medicine in the State of California in active #G10659.

Interrogatory No. 11:

If your answer to the last question was in the affirmative, set forth the following information concerning such degrees or licenses:

(a) Date the degree was acquired;

(b) Major and minor or specific field of study relating to the degree;

(c) Whether or not you have had any work experience after obtaining said degree;

(d) Inclusive dates of employment relative to that degree;

(e) The compensation or salary you received relative to your employment.

Answer to Interrogatory No. 11:

(a) Bachelor of Science 1956, Medical Doctor 1959.

(b) Medicine.

(c) Yes.

(d) June, 1959 to the present.

(e) See attached tax records.

SELECTED PAGES FROM REPORTER'S TRIAL TRANSCRIPT

The Court: I think the financial declaration would reasonably cover it, any way. It does not—

Mr. Silverman: I'll withdraw it.

Q. Have you been able to save anything in the last three months, Doctor?

A. No.

Q. In fact, have you spent more money than you have taken in; is that correct?

A. That is correct.

The Court: Now, as I would understand it, Mr. Silverman—

The Witness: I do have the $60 a month that goes to Federal Credit Savings.

The Court: His expenses as currently stated, do not include any payments for spousal support within these figures?

Mr. Silverman: That's right.

The Court: All right.

Mr. Silverman: Nothing further, your Honor.

Mr. Winter.

CROSS-EXAMINATION

By Mr. Winter:

Q. Doctor, in addition to this $2,596.51 that you received, you receive other benefits, don't you?

A. Yes, sir.

Q. And they give you a house on base to live on; is that right?

A. That is right.

Q. Would you tell the Court—would you describe that house to the Court, please. [Trial Transcript, p. 19.]

* * *

The Court: I think it is relevant in terms of the future here but in terms of the present state of the record—but I think, based on what I indicated my inclination was going to be, that is, a failure or unwillingness to do anything more as far as spousal support was concerned, other than deal with the present facts and circumstances of the parties with the understanding that there were, at least, three or four different alternatives that might occur with one or the other within the next couple of years. I mean, it is relevant if I were going to do something more than that, but I think, based on my expression to you in chambers, I would simply issue an order based upon current circumstances, with everybody fully understanding that any change of those circumstances that occurs, there would likewise be an ability, if the parties could not, themselves, agree on some different arrangement, the ability of either party, based upon whoever is affected by those changes, to come back into court, at that point, and seek a change in the order, based on the changed circumstances. So, I would speculate, at this point, in terms of what is—or I

won't make an order on spousal support based on some speculation of what his income might or might not be at some point in the future because, I think we ought to make that determination when his income changes. And, I assume, also, because of the time frame we're dealing with, and the fact that he is to get his retirement, he has to stay in at least until June of '78. It's possible, for one reason or another, he may decide to stay in longer than that. So, essentially, what I am going to be dealing with is on a relatively short-term basis in terms of fixing a specific amount, and then, that amount is going to be subject to change, depending upon what the circumstances of each of the parties are. So, I think, in that sense, it is irrelevant what happens beyond that.

Mr. Winter: All I was trying to do was to demonstrate the man's background and his total ability to earn money at the present time, which would include whatever he decides to do. In other words, can quit tomorrow and still be a cardiovascular surgeon which, I guess, isn't bad.

Mr. Silverman: Not a surgeon—

Mr. Winter: All right, cardiologist.

The Court: I assume, Mr. Silverman can stipulate to that, but we're still dealing, essentially, with what he is actually producing. I recognize his capacity might be greater than what he is receiving, and under other circumstances his capacity might be more important than actual income. But I think, given a situation where he is within 15 months of acquiring a lifetime annuity, some portion of which, under my understanding of the California law, your client is going to be entitled to, and therefore, there is plenty of reason for her best interest to also require him

to continue on until, at least, he has acquired that vested interest. So, I think we all agree, but I don't think you need to go into it.

Mr. Winter: Don't what? What is your ruling?

The Court: I think it is irrelevant. I recognize he could quit tomorrow and he could step out into the private world of medicine and undoubtedly, if he sought to conduct a practice. . . . [Trial Transcript, pp. 30-31.]

* * *

The Court: I don't think it goes back to the no fault business. I think, to the extent you're going into that direction—go ahead.

Mr. Winter: Thank you.

The Witness: May I make a comment?

The Court: No. We deal, Doctor, purely on a question and answer basis. So, all your role will be to answer questions of Mr. Winter or Mr. Silverman. And to the extent a particular question brings forth an answer which you feel requires some explanation beyond the brief answer, you are certainly welcome to give that. But, essentially, we deal with questions and answers.

Mr. Winter: Thank you, your Honor.

Q. Doctor, you were in medical school at the time that you were married; is that correct?

A. That is correct.

Q. And as a matter of fact, you were in medical school before you joined the Army, too?

A. That is correct.

Q. And then, you obtained your medical degree, your internship, your—or first, your residence—no, first, your internship, and then, your residence, your board certifica-

tion, that was all done during the time that you and your wife were married; isn't that right?

A. That's right.

Mr. Winter: All right. I have no further questions. . . . [Trial Transcript, p. 33.]

* * *

Mr. Winter: I didn't know about it.

Mr. Silverman: Is that the only tape?

Lady in the audience: Yeah.

Mr. Collins: Can we hear it?

Mr. Silverman: That is not necessary.

Mr. Collins: Are there any other tapes?

Lady in the audience: No.

Mr. Winter: I'll give it to the clerk.

The Court: That's fine.

Mr. Winter: One more thing I want to be sure about, have we stipulated that Mrs. McCarty is a resident, and was at the time of the filing of this action? I think we have.

Mr. Silverman: Well, he testified to it.

The Court: It's been testified to.

Mr. Winter: I would just like to state then that my stipulation, as well as my fact—perhaps I ought to just ask her a couple of questions because I think her residence is certainly a very important thing, as far as the record is concerned.

Q. Mrs. McCarty, when did you and your husband come here to live?

A. In 1974.

Q. Now, subsequent thereto, did you obtain a California driver's license?

A. Yes.

Q. And when did you do that?

A. In August of 1974.

Q. And did you vote in California?

A. Yes.

Q. And when did you vote in California?

A. I filed for voting registration in the spring of '75 and I have voted in every election since.

Q. Do you consider yourself a California resident?

A. Yes, I pay residence tuition to the state university.

Q. And do you consider yourself a resident?

A. Yes.

Q. How long have you considered yourself a resident of California?

A. Since our arrival in 1974.

Q. Now, prior to that time, where were you a resident?

A. Oregon.

Q. How long has it been since you and your husband has actually been in Oregon?

A. Other than visit?

Q. Yes.

A. We left the state in June of 1959.

Q. You have not lived there since that time?

A. No.

Q. What is the longer period of time you have actually spent in Oregon, any time since 1959?

A. A week, two weeks, vacation visits.

Q. All right. Have you paid—

A. Six weeks I spent in Oregon when I—in the summer of 1960 while my husband, in Texas. I was six weeks living with my parents when I was pregnant with my son.

Q. Your parents live in Oregon?

A. They did at that time, yes.

Q. Do you know whether or not any income tax returns have you filed with the State of Oregon for the past five years.

A. They have not.

Q. Do you know whether your husband has actually lived in Oregon within any time—within the past five years?

A. He has not.

Q. Your husband was paying some money to your mother for her support prior to your separation; is that right?

A. Not my mother.

Q. His mother.

A. Yes.

Q. Prior to separation?

A. Yes.

Q. And how much was he paying her?

A. A hundred and fifty-one a month.

Q. And was she living with you or your husband or the family during that period?

A. No, she was living alone.

Q. She was living alone?

A. Yes.

Mr. Winter: I have nothing further.

CROSS-EXAMINATION

By Mr. Silverman:

Q. Mrs. McCarty, in reference to your schooling, am I correct that you have nine units left before you obtain your B.S. degree?

A. Right.

Q. And I understand you had two years of credit before your marriage; is that correct?

A. Correct.

Q. And then, you started going back to school part time in approximately 1971?

A. Correct. . . . [Trial Transcript, pp. 46-48.]

* * *

REDIRECT EXAMINATION

By Mr. Collins:

Q. Doctor, have you ever registered to vote or voted in any other state besides Oregon?

A. No, I have not.

Q. And last time you voted, which state did you vote?

A. In Oregon.

Q. And when was that?

A. In 1968.

Q. When did you first maintain and establish a residence in Oregon.

A. In 1956 probably.

Q. And while you were going to medical school, did you inform the school that you intended to remain in Oregon, and did you begin paying tuition to the medical school as a resident?

A. I—yes. I became a official Oregon resident at the time—by the legal definition of resident—tuition, et cetera.

Q. And you consider—at that time, did you consider Oregon to be your home?

A. Yes, that is correct.

Q. Do you consider yourself to be domiciled in California?

A. No, I do not.

Q. Since obtaining the Oregon residency, have you been an officer or with the military service since that time?

A. Since I left the state, yes. I, actually, was not in the military at the time I got it. Then, entered the military during my last year of medical school, and have been with the military ever since I left Oregon.

Q. So, there was no break between your establishment of Oregon residency and domicile in Oregon and your joining the military?

A. I'm sorry, no break. They weren't done simultaneously. There was no moving anywhere.

Q. You remained in Oregon?

A. I was in the same place, that is correct.

Mr. Collins: I have no further questions, your Honor.

Mr. Winter: No further questions, your Honor.

The Court: You can step down.

The Witness: Thank you.

Mr. Winter: From our side of the case, your Honor, we only have one more matter, and that is the question of counsel fees.

I have submitted to the Court, attached to our declaration, a statement setting forth fees as of to date, and added to that should be an additional $1,100 for today, and also, anticipated for the memorandum that I will now have to prepare in opposition to counsel's memorandum. In other words, I have computed another $400 for today and $300 for three to four hours worth of research that will now have to be done, and including the preparation of the additional memorandum.

So, we, therefore, are asking for counsel fees in addition to what was previously received in the amount of another $3,000. If the Court would prefer, I will take the stand and testify as to that. Depends on the Court and counsel. I am certainly prepared to do so.

Mr. Silverman: What do you mean by testify?

Mr. Winter: As to the amount of time that we have put in on the case, and also, to the amount of time and our fees . . . [Trial Transcript, pp. 55-56.]